

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF OREGON
6 PORTLAND DIVISION
7

8 KEVIN WALCH,)

9 Plaintiff,)

10 vs.)

11 COLUMBIA COLLECTION SERVICE,)
12 INC.,)

13 Defendant.)
14

No. 03:12-cv-00345-HU

FINDINGS & RECOMMENDATION
ON MOTION TO DISMISS

15 Michael Fuller
16 OlsenDaines, PC
17 9415 SE Stark Street, Suite 207
18 Portland, OR 97216

19 Attorney for Plaintiff

20 Jeffrey I. Hasson
21 Davenport & Hasson, LLP
22 12707 NE Halsey Street
23 Portland, OR 97230

24 Attorney for Defendant
25
26
27
28

HUBEL, Magistrate Judge:

In this case, the plaintiff Kevin Walch seeks to recover from the defendant Columbia Collection Service, Inc. ("Columbia") for allegedly malicious and unlawful debt collection practices. See Dkt. #1-1, pp. 2-12. The case is before the court on Columbia's motion to dismiss, Dkt. #8. The motion is fully briefed, and I submit the following Findings and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

I. PROCEDURAL HISTORY

Walch owed a debt to Silverton Hospital, which he alleges Columbia was attempting to collect. *Id.* ¶ 4. On July 21, 2010, Walch filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 701 *et seq.* *Id.* ¶ 5; Dkt. #7, p. 5. In his bankruptcy schedules, he included Silverton Hospital and "Columbia Collections, Inc." as unsecured creditors. *Id.* Walch received a discharge in his bankruptcy case on October 25, 2010. Dkt. #1-1 ¶ 7; Dkt. #7, p. 5. According to Walch, Columbia was notified of his bankruptcy discharge by the Bankruptcy Court at Columbia's "registered business address"; i.e., "Columbia Collections, PO Box 22779 Portland, OR 97269."¹ Dkt. #1-1 ¶ 8; Dkt. #7, p. 5. Walch claims that nevertheless, Columbia continued

¹Records of the Oregon Secretary of State indicate "Columbia Collections" is an assumed business name of "Columbia Collection Service, Inc." The correct mailing address of the registered agent for "Columbia Collections" is P.O. Box 22709 (not 22779), Milwaukee, OR 97269. Columbia Collection Service, Inc. has a different registered agent and principal place of business from "Columbia Collections." Compare http://filinginoregon.com/pages/business_registry/research/index.html, Registry No. 125250-93 with Registry No. 212373-18 (visited 04/30/12).

1 to engage in actions to collect the discharged debt. Dkt. #1-1,
2 *passim*.

3 On January 23, 2012, Walch filed suit against Columbia in
4 Clackamas County, alleging that despite having been notified of
5 discharge of the Silverton Hospital debt, Columbia continued its
6 collection efforts, including obtaining a default judgment against
7 him for the amount of the debt plus attorney's fees and costs, and
8 even garnishing his wages. He also alleges Columbia unlawfully
9 contacted his employer in an attempt to collect the discharged
10 debt; threatened and harassed him, caused him to suffer emotional
11 distress, and damaged his reputation. Dkt. #1-1. Walch asserts
12 the following claims for relief in his Complaint:

13 1. First Claim for Relief - he alleges Columbia "willfully
14 disobeyed the Bankruptcy Court Discharge Order," entitling Walch to
15 recover his attorney's fees and costs under ORS § 20.105. Dkt. #1-
16 1, ¶¶ 20 & 21.

17 2. Second Claim for Relief - he claims Columbia's debt
18 collection practices were unlawful, in violation of ORS § 646.639,
19 entitling him to recover "actual damages or \$200, punitive damages,
20 reasonable attorneys[']s fees and costs pursuant to ORS 646.641."
21 *Id.* ¶¶ 22-24.

22 3. Third Claim for Relief - he alleges Columbia's actions
23 violated the federal Fair Debt Collection Practices Act ("FDCPA"),
24 15 U.S.C. § 1692 *et seq.*, in several respects, entitling him to
25 recovery statutory damages, attorney's fees, and costs. *Id.* ¶¶ 25-
26 32.

27 4. Fourth Claim for Relief - he claims Columbia converted
28 \$289.70 of his wages by way of unlawful garnishment, entitling him

1 to recover the withheld wages, as well as damages for the loss of
2 use of the money. *Id.*, ¶¶ 33-44.

3 On February 27, 2012, Columbia removed the case to this court
4 based on federal question jurisdiction by virtue of Walch's claims
5 under the FDCPA. Dkt. #1.

6 Columbia moves to dismiss this action on two grounds; i.e.,
7 lack of subject-matter jurisdiction over claims involving Walch's
8 bankruptcy, pursuant to Federal Rule of Civil Procedure 12(b)(1)
9 and *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002);
10 and failure to state a claim upon which relief can be granted under
11 Federal Rule of Civil Procedure 12(b)(6). Dkt. ##4, 5, & 8.

12 13 **II. STANDARDS**

14 "[A] party who seeks to invoke the jurisdiction of the federal
15 courts has the burden of satisfying the jurisdictional require-
16 ments." *Medici v. JPMorgan Chase Bank, N.A.*, slip op., 2012 WL
17 929785, at *1 (D. Or. Mar. 16, 2012) (Haggerty, J.) (citing *Maya v.*
18 *Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011)). In considering
19 a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1),
20 the court "generally accepts as true the allegations in the
21 complaint." *Black v. United States*, slip op., 2012 WL 892243, at
22 *1 (D. Or. Mar. 13, 2012) (Mosman, J.) (citing *Wolfe v. Strankman*,
23 392 F.3d 358, 362 (9th Cir. 2004)). Where appropriate, "the court
24 may consider affidavits and other evidence supporting or attacking
25 the complaint's jurisdictional allegations[,] . . . [but] [w]hen
26 the court receives only written submissions, 'the plaintiff need
27 only make a *prima facie* showing of jurisdiction.'" *Turner v.*

1 *Advantage N.W. Credit Union*, slip op., 2012 WL 529974, at *2 (D.
2 Or. Feb. 17, 2012) (Brown, J.) (citations omitted).

3 With regard to the standards governing motions to dismiss
4 under Rule 12(b)(6), Chief Judge Aiken has explained:

5 Under Fed. R. Civ. P. 12(b)(6), a com-
6 plaint is construed in favor of the plaintiff,
7 and its factual allegations are taken as true. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d
8 992, 998 (9th Cir. 2010). "[F]or a complaint
9 to survive a motion to dismiss, the non-
10 conclusory 'factual content,' and reasonable
11 inferences from that content, must be
12 plausibly suggestive of a claim entitling the
13 plaintiff to relief." *Moss v. United States*
14 *Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
15 2009). "A claim has facial plausibility when
16 the plaintiff pleads factual content that
17 allows the court to draw the reasonable
18 inference that the defendant is liable for the
19 misconduct alleged." *Ashcroft v. Iqbal*, 129
20 S. Ct. 1937, 1949 (2009). "[O]nce a claim has
21 been stated adequately, it may be supported by
22 showing any set of facts consistent with the
23 allegations in the complaint." *Bell Atlantic*
24 *Corp. v. Twombly*, 550 U.S. 544, 563[, 127
25 S. Ct. 1955, 1969, 167 L. Ed. 2d 929] (2007).
26 "[G]enerally the scope of review on a motion
27 to dismiss for failure to state a claim is
28 limited to the Complaint." *Daniels-Hall*, 629
F.3d at 998.

19 *Gambee v. Cornelius*, slip op., 2011 WL 1311782, at *2 (D. Or.
20 Apr. 1, 2011) (Aiken, C.J.).

22 **III. DISCUSSION**

23 Columbia argues the court lacks subject matter jurisdiction
24 over Walch's claims pursuant to *Walls*. I examined *Walls* in detail
25 in *Church v. Onewest Bank FSB*, slip op., 2011 WL 2444719 (D. Or.
26 Jan. 18, 2011) (Hubel, M.J.) ("*Church*"), adopted, slip op., 2011 WL
27 2419896 (D. Or. June 15, 2011) (Haggerty, J.). In *Church*, I
28 explained that under *Walls*, to the extent resolution of a party's

1 claims under state or federal consumer protection statutes
2 "requires interpretation of and determination under bankruptcy laws
3 and rules," such claims cannot be maintained in the district court.
4 *Church*, 2011 WL 2444719, at *5. Under *Walls*, Walch's state claims
5 would be preempted and his federal claims would be precluded to the
6 extent they "necessarily entail bankruptcy-laden determinations."
7 As I noted in *Church*, "Under *Walls*, consumer protection claims
8 which 'necessarily entail bankruptcy-laden determinations' are
9 preempted or precluded, even when they are brought in a separate
10 civil action and even when the bankruptcy is concluded." *Id.*
11 (emphasis added).

12 I noted in *Church*, however, that consumer protection claims
13 are properly heard in the district courts when those claims do not
14 directly allege a violation of the bankruptcy discharge order. *Id.*
15 at *6 (citing *Thomas v. U.S. Bank, N.A.*, No. CV-05-1725-MO, 2007 WL
16 764312, at *9 (D. Or. Mar. 8, 2007) (Mosman, J.)). I therefore
17 will consider each of Walch's claims to determine which of them, if
18 any, may be maintained in this court.

19 Under *Walls*, and the subsequent line of cases I discussed in
20 *Church*, Walch's First Claim for Relief clearly would be preempted.
21 In that claim, Walch alleges Columbia "willfully disobeyed the
22 Bankruptcy Court Discharge Order[.]" Dkt. #1-1 ¶ 21. For Walch to
23 prevail on this claim, the court would have to find Columbia
24 violated 11 U.S.C. § 524, "which provides that discharge under
25 Title 11 of the Bankruptcy Code operates as an injunction against
26 collecting debt as a personal liability of the debtor." *Walls*, 276
27 F.3d at 504. The *Walls* court held no private right of action
28 exists for violation of section 524 because the Bankruptcy Code,

1 itself, contains an enforcement mechanism in the form of civil
2 contempt under 11 U.S.C. § 105(a). *Id.*, 276 F.3d at 507-10. Thus,
3 Walch's First Claim for Relief requests precisely the type of
4 determination that *Walls* and its progeny found to be prohibited.
5 See, e.g., *In re Chaussee*, 399 Bankr. 225, 236-37 (9th Cir. BAP
6 2008) (interpreting *Walls* in concluding that "where the
7 [Bankruptcy] Code and Rules provide a remedy for acts taken in
8 violation of their terms, debtors may not resort to other state and
9 federal remedies to redress their claims lest the congressional
10 scheme behind the bankruptcy laws and their enforcement be
11 frustrated").

12 In Walch's Second Claim for Relief, he alleges Columbia
13 violated ORS § 646.639, which prohibits unlawful debt collection
14 practices. Walch specifies seven ways in which he claims Columbia
15 violated the statute. In subparagraph 23(a), Walch claims Columbia
16 threatened to and did seize his wages "in violation of ORS
17 646.639(2)(c)[.]" Dkt. #1-1 ¶ 23(a). Subsection (2)(c) of section
18 646.639 makes it unlawful for a debt collector to "[t]hreaten the
19 seizure, attachment or sale of a debtor's property when such action
20 can only be taken pursuant to court order without disclosing that
21 prior court proceedings are required." ORS § 646.639(2)(c). In
22 order to prevail on this claim based on the facts alleged by Walch
23 in his Complaint, he would have to prove, first, that the debt had
24 been discharged in bankruptcy. Consequently, this claim would be
25 preempted by *Walls* and its progeny.

26 In subparagraph 23(b), Walch claims Columbia inconveniently
27 communicated with him in violation of ORS § 646.639(2)(e). Dkt.
28 #1-1 ¶ 23(b). The only factual contention related to this claim is

Walch's allegation that Columbia's "attorney directly contacted [him] by mail, demanding [Walch] pay a debt discharged in bankruptcy and threatening to take illegal action against [Walch] if he refused. [Columbia] knew or should have known [Walch] was represented by counsel." Dkt. #1-1, ¶ 9. Contact by Columbia's counsel regarding a discharged debt would implicate the Bankruptcy Code, while contacting him to collect a debt knowing he was represented by counsel would not. This claim would be preempted by *Walls* and its progeny only to the extent it addresses contact regarding a discharged debt.

In subparagraph 23(c), Walch claims Columbia illegally communicated with his employer concerning the debt in violation of ORS § 646.639(2)(f). Dkt. #1-1 ¶ 23(c). Walch's factual allegation relating to this claim asserts that the Writ of Garnishment served on his employer was illegal. To prove this allegation would, in turn, require proof that the debt had been discharged in bankruptcy, again requiring "interpretation of and determination under bankruptcy laws and rules." *Walls* would preclude this claim.

Subparagraphs (d) and (e) of Walch's Second Claim for Relief deal with Columbia's alleged threat or attempt to enforce a right or remedy "with reason to know the right or remedy does not exist, in violation of ORS 646.639(2)(k)." Dkt. #1-1 ¶ 23(d) & (e). At first blush, it would appear each of those allegations would require this court to determine that the debt in question was discharged in bankruptcy. Upon closer examination, however, what actually is required under ORS § 646.639(k) is a determination of what Columbia *knew or had reason to know* at the time it acted as

1 alleged. For purposes of a motion to dismiss, the court finds
2 these allegations state a claim that plausibly suggests Walch's
3 entitlement to relief.

4 Walch's allegations in subparagraphs 23(f) and 23(g) do not
5 appear to implicate the bankruptcy laws and rules. In 23(f), he
6 claims Columbia represented that the debt could be increased by the
7 addition of attorney fees, "in violation of ORS 646.639(2)(m) and
8 the Oregon Rules of Professional Conduct." Dkt. #1-1 ¶ 23(f). In
9 23(g), he claims Columbia unlawfully attempted to collect charges
10 and fees in excess of the actual debt, in violation of ORS
11 § 646.639(2)(n).

12 Thus, in Walch's Second Claim for Relief, his allegations in
13 subparagraph (a), that portion of subparagraph (b) requiring proof
14 that the debt had been discharged, and subparagraph (c) would
15 appear to be preempted by *Walls*. Walch could proceed in this court
16 with that portion of subparagraph (b) relating to contact by
17 Columbia's counsel directly with Walch, knowing he was represented
18 by counsel; and subparagraphs (d) through (g).

19 In Walch's Third Claim for Relief, he alleges violations of
20 the FDCPA. The claim includes three counts. In Count I, Walch
21 alleges Columbia unlawfully communicated with him despite knowing
22 he was represented by counsel. Dkt. #1-1 ¶ 26. That claim does
23 not implicate the Bankruptcy Code and rules. In Count II, he
24 claims Columbia made false representations, each of which relies on
25 the status of the debt as having been discharged in bankruptcy.
26 See *id.* ¶¶ 28-30. In Count III, Walch claims Columbia unlawfully
27 attempted to collect a debt that had been discharged in bankruptcy.
28 See *id.* ¶ 31. Thus, it appears Counts II and III would be

1 precluded under the *Walls* line of cases, while Count I would
2 survive.

3 In his Fourth Claim for Relief, Walch alleges Columbia
4 converted his wages in the amount of \$289.70. Dkt. #1-1 ¶¶ 34-43.
5 In order for the court to find Walch's wages were seized illegally,
6 the court necessarily would have to find that the debt in question
7 had been discharged in bankruptcy. Therefore, it appears this
8 claim also would be preempted by the Bankruptcy Code under *Walls*.

9 Walch argues that even his discharge-related claims "do not
10 require any bankruptcy-laden determinations and . . . do not
11 conflict with the Bankruptcy Code." Dkt. #7, p. 12. He asserts
12 this case can be distinguished from *Walls*, but even if the court
13 finds otherwise, the court should adopt the Seventh Circuit's
14 approach in *Randolph v IMBS, Inc.*, 368 F.3d 726 (7th Cir. 2004),
15 and other courts that have read *Walls* narrowly. Dkt. #7, pp. 10-
16 15. The Ninth Circuit Bankruptcy Appellate Panel considered a
17 similar argument in *B-Real, LLC v. Chaussee (In re Chaussee)*, 399
18 Bankr. 225 (9th Cir. BAP 2008). The *Chaussee* court discussed the
19 *Randolph* holding as follows:

20 Spurning *Walls*, both Debtor and the
21 bankruptcy court would urge us to invoke the
22 reasoning espoused in *Randolph v. IMBS, Inc.*,
23 368 F.3d 726 (7th Cir. 2004), a case in which
24 a debtor's FDCPA claim for violating the Code
25 was allowed to proceed. In *Randolph*, a
26 creditor sent a post-discharge letter to the
27 debtor, allegedly in violation of the § 524
28 discharge. Noting that one federal statute
should be found to have impliedly repealed
another only when an irreconcilable conflict
occurs when both co-exist, *Randolph* asserts
that a court must evaluate whether competing
statutes conflict before deciding whether
preclusion applies. *Id.* at 730-31. Finding
no direct conflict between the [Bankruptcy]
Code and FDCPA under the facts before it, the

1 Seventh Circuit ruled that the statutes could
2 both be applied, and the debtor could there-
3 fore pursue a claim for relief against the
4 creditor under FDCPA outside the bankruptcy
5 court. *Id.* at 733.

6 Of course, as a decision of the Ninth
7 Circuit, this Panel is bound to apply *Walls*
8 even were we inclined to agree with the logic
9 and reasoning of *Randolph*. *McDonald v.*
10 *Checks-N-Advance, Inc. (In re Ferrell)*, 358
11 B.R. 777, 791 (9th Cir. BAP 2006). But even
12 if not so constrained, we would respectfully
13 reject *Randolph's* analysis in this context and
14 conclude, as in *Walls*, that the Code precludes
15 application of the FDCPA under our facts.

16 Unlike in *Randolph*, where the debtor's
17 claim against the creditor was based upon the
18 creditor's actions taken after conclusion of
19 the bankruptcy case, the purported FDCPA
20 violation targets B-Real's act of filing a
21 proof of claim in the pending bankruptcy case.
22 Application of the FDCPA to this conduct would
23 certainly conflict with the Code.

24 *Chaussee*, 399 Bankr. at 237. This analysis suggests that, absent
25 the precedential effect of *Walls*, the *Chaussee* court might have
26 viewed the *Randolph* court's analysis more favorably under a similar
27 set of facts. Nevertheless, like the *Chaussee* court, this court
28 would appear to be bound by *Walls*, absent a subsequent change in
the law.

29 In summary, then, under *Walls* and its progeny, it would appear
30 that Walch could proceed in this action only on his Second Claim
31 for Relief, and Count I of his Third Claim for Relief. However, on
32 June 23, 2011, the United States Supreme Court issued an opinion
33 that threw the proverbial wrench into the works. In *Stern v.*
34 *Marshall*, ___ U.S. ___, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011),
35 the Court held that although Bankruptcy Courts have *statutory*
36 authority to enter judgment in certain types of actions, such as
37 common-law tort claims, they lack the *constitutional* authority to

1 do so under Article III. In Walch's response to Columbia's motion
2 to dismiss, he suggested the *Stern* decision at least "raises
3 questions" regarding whether a bankruptcy court would have the
4 authority to issue a judgment on his discharge-related claims in
5 this case. Dkt. #7, pp. 7-8. Walch requested the opportunity to
6 brief the issue further, and at the court's direction, the parties
7 briefed the issue of the impact of *Stern*, if any, on Columbia's
8 motion to dismiss. See Dkt. ##12 & 13.

9 Walch argues *Stern* is directly applicable, to the extent a
10 dismissal would affect his claims that do not implicate the
11 Bankruptcy Code. He argues the Bankruptcy Court would not have
12 jurisdiction, under *Stern*, to decide those disputes, asserting
13 "[t]he test to determine whether a dispute may be heard in
14 bankruptcy court is whether 'the outcome could alter the debtor's
15 rights, liabilities, options, or freedom of action (either
16 positively or negatively) and which in a way impacts upon the
17 handling and administration of the bankruptcy estate.'" Dkt. #13,
18 p. 3 (quoting *Pacor v. Higgins*, 743 F.2d 987, 994 (3d Cir. 1984);
19 and citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6, 115
20 S. Ct. 1493, 1499 n.6, 131 L. Ed. 2d 403 (1995) (citing *Pacor* for
21 the proposition that a bankruptcy court's jurisdiction over matters
22 "related to" the bankruptcy estate "cannot be limitless")).

23 With regard to his claims that are more closely related to his
24 bankruptcy case, Walch argues *Stern* raises questions about the
25 Bankruptcy Court's constitutional authority to provide him with any
26 relief. Walch notes that Columbia did not file a proof of claim or
27 appear in his bankruptcy case, and thus it never submitted itself
28 to the Bankruptcy Court's authority. Dkt. #13, p. 4. In addition,

1 he notes that although he listed Columbia in his schedules,
2 Columbia was not actually a creditor of the bankruptcy estate; it
3 was "merely a third party debt collector for creditor Silverton
4 Hospital, and thus . . . had no impact on the handling or
5 administration of the bankruptcy estate." Dkt. #13, p. 5. Walch
6 also points out that the wages Columbia garnished from his pay a
7 year after closure of the bankruptcy case "did not constitute
8 property of the estate, and thus the Bankruptcy Court lacks
9 authority to order [Columbia] to turnover the property." *Id.*

10 As one would expect, Columbia takes the opposite view, arguing
11 *Stern* "does not overrule" *Walls* or this court's previous decision
12 in *Church*. Columbia notes that in *Stern*, the Bankruptcy Court had
13 entered judgment on a defamation claim, "when defamation was not a
14 remedy within the Bankruptcy Code, and was not based on [a]
15 violation of the Bankruptcy Code . . . for which the Bankruptcy
16 Code already sets forth a remedy[.]" Dkt. #12, pp. 1-2. Columbia
17 argues any violation of the discharge injunction must be raised as
18 a civil contempt proceeding in the Bankruptcy Court. *Id.*, p. 2
19 (citing *Walls*). Columbia argues further that if Walch were allowed
20 to proceed before this court, and obtained a judgment, he then
21 could "obtain a second final judgment in the Bankruptcy Court for
22 Contempt violations." Dkt. #12, p. 2. Columbia asserts, without
23 citation to any authority, that "[t]he Bankruptcy Court is the sole
24 Court with jurisdiction to issue a contempt order for violation of
25 the bankruptcy discharge injunction under 11 U.S.C. § 105." *Id.*

26 Columbia argues all of Walch's claims in this case "stem from
27 the bankruptcy itself[.]" Dkt. #12, p. 3. I disagree, as stated
28 above in my discussion of Walch's claims. The question at issue

1 here is whether the Bankruptcy Court could enter judgment on those
2 claims that *do not* stem from the bankruptcy itself; that is, claims
3 that would exist regardless of the bankruptcy. Alternatively, even
4 if the Bankruptcy Court could not enter a final judgment on Walch's
5 non-bankruptcy claims, would it be an efficient use of judicial
6 resources for the Bankruptcy Court to hear the entire matter, and
7 then submit proposed findings of fact and conclusions of law on
8 those non-core matters pursuant to 28 U.S.C. § 157(c)(1)?

9 As Columbia acknowledges in its brief, Dkt. #12, p. 3, *Stern*
10 limits a Bankruptcy Court's "ability to enter final judgment on
11 those . . . []claims that do not 'stem[] from the bankruptcy
12 itself' or that will not be necessarily resolved in the claims
13 objection process." *In re State Harbor Resort & Spa*, 456 Bankr.
14 703, 716 (Bankr. M.D. Fla. 2011) (quoting *Stern*, 131 S. Ct. at
15 2616)). Thus, under *Stern*, the Bankruptcy Court would lack
16 constitutional authority to enter final judgment as to Walch's
17 claims that do not "necessarily entail [any] bankruptcy-laden
18 determinations." *Walls*, 276 F.3d at 510.

19 Walch's claims that are dependent upon the bankruptcy dis-
20 charge order stem directly from the bankruptcy, and the Bankruptcy
21 Court would have the authority to award relief on those claims by
22 way of civil contempt proceedings. See 11 U.S.C. § 105; Fed. R.
23 Bankr. P. 9014, 9020; *cf. Barrientos v. Wells Fargo Bank, N.A.*, 633
24 F.3d 1186, 1189-90 (9th Cir. 2011) (explaining the difference
25 between a "contested matter" and an "adversary proceeding" under
26 the Bankruptcy Code). "[C]ontempt proceedings brought by the
27 trustee or a party in interest are contested matters that must be
28 brought by motion in the bankruptcy case under Bankruptcy Rule

1 9014." *Barrientos*, 633 F.3d at 1191. "[C]ompensatory civil
2 contempt allows an aggrieved debtor to obtain compensatory damages,
3 attorneys fees, and the offending creditor's compliance with the
4 discharge injunction. Therefore, contempt is the appropriate
5 remedy[.]" *Walls*, 276 Fed. 3d at 507; *Church*, 2011 WL 2444719, at
6 *5.

7 A Bankruptcy Court clearly has "jurisdiction to interpret and
8 enforce its own prior orders," even years after the bankruptcy case
9 has been closed. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137,
10 ___, 129 S. Ct. 2195, 2205, 174 L. Ed. 2d 99 (2009) (citing *Local*
11 *Loan Co. v. Hunt*, 292 U.S. 234, 239, 54 S. Ct. 695, 697, 78 l. Ed.
12 1230 (1934)). However, the fact that the circumstances of most of
13 Walch's claims "arise from bankruptcy procedures does not alter the
14 fact that bankruptcy judges are not Article III judges." *In re*
15 *Ortiz*, 665 F.3d 906, 913 (7th Cir. 2011) (citing *Stern*, 131 S. Ct.
16 at 2609). Contrary to Columbia's assertions that this court lacks
17 subject matter jurisdiction over Walch's bankruptcy-related claims,
18 and that "[t]he Bankruptcy Court is the sole Court with
19 jurisdiction to issue a contempt order for violation of the
20 bankruptcy discharge injunction under 11 U.S.C. § 105," Dkt. #12,
21 pp. 1-2, the District Court has jurisdiction over claims for civil
22 contempt under 28 U.S.C. § 105. *In re Death Row Records, Inc.*,
23 slip op., 2012 WL 952292, at *11 (9th Cir. BAP Mar. 21, 2012)
24 (citing 28 U.S.C. § 1334(b), giving the District Courts "original
25 but not exclusive jurisdiction of all civil proceedings arising
26 under title 11, or arising in or related to cases under title 11,"
27 except in limited circumstances not relevant here). Furthermore,
28 the District Court has discretion to withdraw any case or

1 proceeding from the Bankruptcy Court, either *sua sponte* or on
2 motion of any party, "for cause shown," and *must* withdraw the
3 reference in certain circumstances. 28 U.S.C. § 157(d).

4 The current landscape of *Stern*-related determinations con-
5 tinues to shift. The Ninth Circuit Court of Appeals is considering
6 a case involving *Stern*-related issues at the time of this writing.
7 It appears to the undersigned that there are three ways to handle
8 this matter: (1) refer to the Bankruptcy Court those claims that
9 require bankruptcy-laden determinations, and keep the other claims
10 in this court; (2) refer the entire case to the Bankruptcy Court
11 for that court to hear, and enter judgment on, those claims as to
12 which it finds it has jurisdiction, and submit findings and
13 recommendations to a District Judge on the other claims; or (3)
14 withdraw the reference as to the entire case. There is precedent
15 to support any of these three options.

16 It would seem to be most efficient to have the entire case
17 heard at one time, in one court. At oral argument, Walch indicated
18 he prefers to have the entire case remain in this court; however,
19 he does not object to referral of the entire case to the Bankruptcy
20 Court. Columbia prefers referral of the entire case to the
21 Bankruptcy Court.

22 I recommend the entire matter be referred to the Bankruptcy
23 Court. Some of Walch's claims will be resolved completely when the
24 Bankruptcy Court determines whether its discharge order has been
25 violated, and if so, what remedy is appropriate. As for the
26 remaining claims, it would be appropriate for the Bankruptcy Court
27 to determine the scope of its jurisdiction, and then to decide
28 those claims as to which it concludes it has jurisdiction, and

1 submit findings and recommendations to the District Court on the
2 remaining claims.

3 I do not, however, recommend granting Columbia's motion to
4 dismiss. Instead, I recommend the motion be **denied**, and then the
5 case be referred to the Bankruptcy Court for further proceedings as
6 discussed above.

7
8 ***SCHEDULING ORDER***

9 These Findings and Recommendations will be referred to a
10 district judge. Objections, if any, are due by **July 9, 2012**. If no
11 objections are filed, then the Findings and Recommendations will go
12 under advisement on that date. If objections are filed, then any
13 response is due by **July 26, 2012**. By the earlier of the response
14 due date or the date a response is filed, the Findings and
15 Recommendations will go under advisement.

16 IT IS SO ORDERED.

17 Dated this 19th day of June, 2012.

18
19 /s/ Dennis J. Hubel

20
21

Dennis James Hubel
Unites States Magistrate Judge
22
23
24
25
26
27
28